

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JUSTIN P. WELCH,

Plaintiff,

-vs-

Case No. 15-CV-191

KYLE K. TRITT, et al.,

Defendants.

ORDER

The plaintiff, a Wisconsin state prisoner, has filed a motion requesting that the Court order the disbursement of \$132.00 from his release account to be applied to the outstanding filing fees due in this action. (Docket #8.) The Prison Litigation Reform Act (PLRA) requires the Court to collect the filing fee from a “prisoner’s account.” 28 U.S.C. § 1915(b). The term “prisoner’s account” encompasses both a prisoner’s release account and general account. *Spence v. McCaughtry*, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). However, “given the purpose of the release account to provide funds to the prisoner upon his or her release from incarceration, the Court does not deem it prudent to routinely focus on the release account as the initial source of funds to satisfy the filing fee payment requirements of the PLRA.” *Smith v. Huibregtse*, 151 F. Supp. 2d 1040 (E.D. Wis. 2001). Nevertheless, upon request, the Court will

allow a plaintiff to pay a filing fee, or a portion thereof, out of his release account. *Doty v. Doyle*, 182 F. Supp. 2d 750, 752 (E.D. Wis. 2002).

The plaintiff's desire to have \$132.00 deducted from his release account is clear; thus, the Court will grant the plaintiff's motion.

The plaintiff has also filed a motion seeking to correct the record and/or clarify responses from defendants' counsel. (Docket #21.) On May 12, 2015, the parties filed a joint consent to proceed before Magistrate Judge William Callahan, Jr. (Docket #14.) On May 13, 2015, the clerk's office notified the parties that the case had been reassigned from Magistrate Judge Callahan to Magistrate Judge Nancy Joseph. Pursuant to Federal Rule of Civil Procedure 73, the case could proceed before Magistrate Judge Joseph only if all parties consented to the referral. On May 14, 2014, defendants filed a refusal to consent to the referral to Magistrate Judge Joseph. (Docket #15.)

Plaintiff seeks to correct the record based on his consent to proceed before Magistrate Judge Joseph, which he filed on May 18, 2015 (Docket #17); however, the case may not be referred to Magistrate Judge Joseph unless *all* parties consent. The record is correct, and this matter will continue to proceed before this Court.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT that the plaintiff's motion to disburse \$132.00 from his release account to make a partial payment toward the filing fee balance (Docket #8) is **GRANTED**.

IT IS FURTHER ORDERED that the warden at Waupun Correctional Institution shall withdraw \$132.00 from the plaintiff's release account and forward that sum to the Clerk of this Court as a partial payment of the remaining filing fee in this action. Such payment is to be made by **June 30, 2015**.

IT IS FURTHER ORDERED that a copy of this order be sent to the warden of Waupun Correctional Institution.

IT IS FURTHER ORDERED that the plaintiff's motion for reconsideration and/or clarification of the record is **DENIED**.

Dated at Milwaukee, Wisconsin, this 4th day of June, 2015.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge